

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

Chelsea L. Davis, <i>Plaintiff</i> v. Samuel F. Baxter, <i>Defendant</i>	 Case 4:13-cv-00514
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PLAINTIFF’S MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 41(a)(2)

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff Chelsea L. Davis (“Plaintiff”) who moves to dismiss her complaint without prejudice pursuant to Fed. R. Civ. P. 41(a)(2).

I. INTRODUCTION

Plaintiff’s complaint asserts causes of action under state, not federal, law. Plaintiff alleges Defendant has committed human trafficking, aggravated assault and civil conspiracy as defined by state, not federal, law and seeks civil remedies available under state, not federal, law. Defendant Samuel F. Baxter seeks to delay Plaintiff from pursuing her causes of action in state court by filing a notice of removal to federal court. Plaintiff respectfully requests the Court to dismiss her claims without prejudice in accordance with her request pursuant to Fed. R. Civ. P. 41(a)(2).

II. ARGUMENT

Federal Rule of Civil Procedure 41(a)(2) provides that “an action may be dismissed at the

plaintiff's request only by court order, on terms that the court considers proper." *Id.* While the decision to dismiss an action pursuant to Rule 41(a)(2) falls within the discretionary power of the Court, motions filed under Rule 41(a)(2) should be allowed as long as dismissal would not cause substantial prejudice to the defendant.

In the present case, Plaintiff filed her Original Complaint on August 27, 2013. Defendant filed a Notice of Removal on September 9, 2013. This morning, Plaintiff notified Defendant of her intention to file the present motion, and she attempted to contact Defendant's counsel for a conference regarding voluntary dismissal of her claims. Defendant's counsel avoided her attempt to contact him by phone and email and quickly filed an answer in order to add insult to injury. Defendant's answer does not allege any counterclaims, and thus dismissal would not cause any prejudice to Defendant.

III. CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests that the Court dismiss her claims of human trafficking, aggravated assault and civil conspiracy as set forth in her Complaint without prejudice to refiling at a later date and without an award of fees or costs.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument was delivered to counsel of record in accordance with the Federal Rules of Civil Procedure via the CM/ECF system upon the filing hereof on this 10th day of September, 2013.


Chelsea L. Davis, *Pro-Se Plaintiff*